

SENATE BILL NO. 107
INTRODUCED BY PINSONEAULT
BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE SENATE

JANUARY 13, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
JANUARY 26, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 27, 1989	PRINTING REPORT.
JANUARY 28, 1989	SECOND READING, DO PASS.
JANUARY 30, 1989	ENGROSSING REPORT.
JANUARY 31, 1989	THIRD READING, PASSED. AYES, 46; NOES, 3.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 31, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 20, 1989	FIRST READING.
MARCH 14, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 18, 1989	SECOND READING, CONCURRED IN.
MARCH 21, 1989	THIRD READING, CONCURRED IN. AYES, 78; NOES, 16.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 1, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 4, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *107*
2 INTRODUCED BY *Sen. Sam Paul*
3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAWS
6 RELATING TO EXECUTIVE CLEMENCY; AMENDING SECTIONS 46-23-301
7 AND 46-23-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
8 DATE."
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 46-23-301, MCA, is amended to read:

12 "46-23-301. Cases of executive clemency -- approval of
13 board. The board shall investigate--and--report--to--the
14 governor-with-respect-to-all-cases-of-executive-clemency;--A
15 majority-of-the-board-shall-advise;--investigate;--and--approve
16 each--such--case--before-the-action-of-the-governor-shall-be
17 final consider cases of executive clemency only upon
18 application. All applications for executive clemency shall
19 must be made to the board; which Applications may be filed
20 only by the person convicted of the crime, by his attorney
21 acting on his behalf and with his consent, or by a
22 court-appointed guardian or conservator acting on his
23 behalf. The board shall cause an investigation to be made
24 of all the circumstances surrounding the crime for which the
25 applicant was convicted and as to the individual

1 circumstances relating to social conditions of the
2 applicant. ~~if-the-board-or-a-majority-thereof-approves-such~~
3 ~~application-for--executive--clemency;--it~~ The board shall
4 advise the governor and recommend action to be taken. ~~If the~~
5 ~~board recommends that no clemency be granted, the governor~~
6 ~~may not grant clemency. If the board recommends that~~
7 ~~clemency be granted, the governor shall review the record of~~
8 ~~the hearing and the board's decision and make a final~~
9 ~~decision on clemency."~~

10 **Section 2.** Section 46-23-315, MCA, is amended to read:

11 "46-23-315. Authority of governor to grant respite.

12 The governor has the power to grant respites after
13 conviction and judgment for any offenses committed against
14 the criminal laws of the state for such time as he thinks
15 proper. A respite must be of temporary duration for a
16 definite period of time. Any respite that is granted that
17 stays the execution of a death warrant has the effect of
18 postponing the execution of the warrant. In such a case, if
19 clemency is not granted, the death warrant is again in
20 effect at the expiration of the period of respite and the
21 execution must take place on the date of expiration of the
22 respite."

23 **NEW SECTION. Section 3.** Extension of authority. Any
24 existing authority to make rules on the subject of the
25 provisions of [this act] is extended to the provisions of

LC 0723/01

1 [this act].

2 NEW SECTION. **Section 4.** Effective date. [This act] is

3 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 107
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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAWS
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AND THROUGH 46-23-303, 46-23-307, 46-23-315, AND 46-23-316,
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Section 1. Section 46-23-301, MCA, is amended to read:

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board: APPLICATION FOR CLEMENCY -- DEFINITIONS. (1) (A)
"CLEMENCY" MEANS KINDNESS, MERCY, OR LENIENCY THAT MAY BE
EXERCISED BY THE GOVERNOR TOWARDS A CONVICTED PERSON. THE
GOVERNOR MAY GRANT CLEMENCY IN THE FORM OF:

(I) THE REMISSION OF FINES OR FORFEITURES;

(II) THE COMMUTATION OF A SENTENCE TO ONE WHICH IS LESS
SEVERE;

(III) RESPITE; OR

(IV) PARDON.

(B) "PARDON" MEANS A DECLARATION OF RECORD THAT AN
INDIVIDUAL IS TO BE RELIEVED OF ALL LEGAL CONSEQUENCES OF A
PRIOR CONVICTION.

(2) A PERSON CONVICTED OF A CRIME NEED NOT EXHAUST

JUDICIAL OR ADMINISTRATIVE REMEDIES BEFORE HE FILES AN
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Applications may be filed only by the person convicted of
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(B) as to the individual circumstances relating to
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(3)The board shall advise the governor and recommend
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1 ~~board-recommends-that--clemency--be--granted,--the--governor~~
 2 ~~shall--review--the--record--of--the--hearing-and-the-board's~~
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 4 MAY RECOMMEND THAT CLEMENCY BE GRANTED OR DENIED. IN
 5 NONCAPITAL CASES, IF THE BOARD RECOMMENDS THAT CLEMENCY BE
 6 DENIED, THE APPLICATION MUST NOT BE FORWARDED TO THE
 7 GOVERNOR AND THE GOVERNOR MAY NOT TAKE ACTION ON THE CASE.
 8 IN CAPITAL CASES, THE BOARD SHALL TRANSMIT THE APPLICATION
 9 AND EITHER A RECOMMENDATION THAT CLEMENCY BE GRANTED OR A
 10 RECOMMENDATION THAT CLEMENCY BE DENIED TO THE GOVERNOR. THE
 11 GOVERNOR IS NOT BOUND BY ANY RECOMMENDATION OF THE BOARD,
 12 BUT HE SHALL REVIEW THE RECORD OF THE HEARING AND THE
 13 BOARD'S RECOMMENDATION BEFORE HE GRANTS OR DENIES CLEMENCY.
 14 THE GOVERNOR HAS THE FINAL AUTHORITY TO GRANT OR DENY
 15 CLEMENCY IN THOSE CASES FORWARDED TO HIM."

16 **SECTION 2.** SECTION 46-23-302, MCA, IS AMENDED TO READ:

17 "46-23-302. Order for hearing on application for
 18 executive clemency. After the board has duly considered an
 19 application for executive clemency and has by majority vote
 20 favored a ~~recommendation--of--executive--clemency--to--the~~
 21 ~~governor~~ hearing, it must pass an order in substance as
 22 follows:

23 "Whereas, the Board of Pardons has officially received
 24 an application for executive clemency concerning, a
 25 convict confined in the state prison (or to one, who

1 has been found guilty of an offense committed against the
 2 laws of the state), who was convicted of the crime of
 3 committed at, in the county of, State of Montana,
 4 on the day of, 19.., and sentenced for a term of
 5 years.

6 Therefore, be it ordered that, the day of
 7, 19.., be set apart for the consideration of said
 8 executive clemency matter; and all persons having an
 9 interest therein desiring to be heard either for or against
 10 the granting of the pardon ~~or--reprieve~~, commutation,
 11 restoration of citizenship, ~~or~~ remission or suspension of
 12 fine or forfeiture are hereby notified to be present at
 13 o'clock of said day, at

14 Further, ordered that a copy of this order be printed
 15 and published in the (here insert name of some
 16 newspaper of general circulation in the county where the
 17 crime was committed), a daily (or weekly) newspaper printed
 18 and published at, in the county of, once each week
 19 for 2 weeks beginning, 19.., and ending"

20 **SECTION 3.** SECTION 46-23-303, MCA, IS AMENDED TO READ:

21 "46-23-303. Publication of order. The board must cause
 22 a copy of such order to be published in the newspaper
 23 therein designated at least once a week for 2 weeks prior to
 24 the hearing and, at the same time, cause to be deposited in
 25 the post office at the seat of government, postpaid, a copy

of said order and notice addressed to the district judge, county attorney, and sheriff, respectively, of the county where the crime was committed and in like manner mail a copy of the order to the ~~petitioner-and-the-convict~~ applicant."

SECTION 4. SECTION 46-23-307, MCA, IS AMENDED TO READ:

"46-23-307. Decision of board. Within 30 days after the hearing of any capital case or in noncapital cases where the decision is made to recommend clemency be granted, the board must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision together with all papers used in each case shall be immediately transmitted to the governor."

Section 5. Section 46-23-315, MCA, is amended to read:

"46-23-315. Authority of governor to grant respite -- APPLICATION. The governor has the power to grant respites after conviction and judgment for any offenses committed against the criminal laws of the state for such time as he thinks proper. THE GOVERNOR MAY GRANT A RESPITE UPON APPLICATION OF A PERSON AUTHORIZED TO APPLY FOR EXECUTIVE CLEMENCY AND PRIOR TO ANY REVIEW OR RECOMMENDATION BY THE BOARD OF PARDONS. A respite must be of temporary duration for a definite period of time. Any respite that is granted that stays the execution of a death warrant has the effect of postponing the execution of the warrant. In such a case, if clemency is not granted, the death warrant is again in

effect at the expiration of the period of respite and the execution must take place on the date of expiration of the respite."

SECTION 6. SECTION 46-23-316, MCA, IS AMENDED TO READ:

"46-23-316. Governor's report to legislature. The governor must communicate to the legislature at each regular session each case of remission of fine or forfeiture, reprieve respite, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon, or reprieve respite, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto."

NEW SECTION. **Section 7.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 8.** Effective date. [This act] is effective on passage and approval.

-End-

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JUDICIAL OR ADMINISTRATIVE REMEDIES BEFORE HE FILES AN APPLICATION FOR CLEMENCY. The board shall investigate--and report--to--the--governor--with--respect--to--all--cases--of executive-clemency--A-majority-of-the--board--shall--advise, investigate, and approve each such case before the action of the--governor--shall--be--final consider cases of executive clemency only upon application. All applications for executive clemency shall must be made to the board, which Applications may be filed only by the person convicted of the crime, by his attorney acting on his behalf and with his consent, or by a court-appointed NEXT FRIEND, guardian, or conservator acting on his behalf. The board shall cause an investigation to be made:

(A) of all the circumstances surrounding the crime for which the applicant was convicted; and

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(3) The board shall advise the governor and recommend action to be taken. If the board recommends that no clemency be--granted,--the--governor--may--not--grant--clemency;--if--the

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Section 5. Section 46-23-315, MCA, is amended to read:

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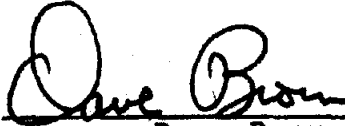
-End-

STANDING COMMITTEE REPORT

March 14, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 107 (third reading copy -- blue) be concurred in as amended.

Signed: 
Dave Brown, Chairman

[REP. MERCER WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 2, line 13.

Following: "made"

Insert: "of, and base any recommendation it makes on,"

2. Page 2, line 14.

Strike: "of"

3. Page 2, line 16.

Strike: "as to"

4. Page 2, lines 19 and 20.

Strike: "ANY" on line 19 through "CRITERIA." on line 20

SB 107

HOUSE RT

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if clemency is not granted, the death warrant is again in effect at the expiration of the period of respite and the execution must take place on the date of expiration of the respite."

SECTION 6. SECTION 46-23-316, MCA, IS AMENDED TO READ:

"46-23-316. Governor's report to legislature. The governor must communicate to the legislature at each regular session each case of remission of fine or forfeiture, reprieve respite, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon, or reprieve respite, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto."

NEW SECTION. **Section 7.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 8.** Effective date. [This act] is effective on passage and approval.

-End-